

**BEFORE THE PUBLIC UTILITIES COMMISSION**

**OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking to Consider Modifications ) Rulemaking No. 12-10-012  
to the California Advanced Services Fund. \_\_\_\_\_ ) (Filed October 25, 2012)

**REPLY COMMENTS OF RACE TELECOMMUNICATIONS, INC. (U-7060-C)  
ON PROPOSED DECISION OF COMMISSIONER GUZMAN ACEVES  
IMPLEMENTING THE CALIFORNIA ADVANCED SERVICES FUND  
INFRASTRUCTURE ACCOUNT REVISED RULES**

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Pursuant to Rule 14.3 of the Commission’s Rules of Practice and Procedure, Race Telecommunications, Inc. (Race) hereby timely files its Reply Comments on the Proposed Decision of Commissioner Guzman Aceves, entitled “Decision Implementing the California Advanced Services Fund Infrastructure Account Revised Rules” (PD), released on November 9, 2018. Race responds to Comments filed by various parties.

2.1 Eligible Areas: The California Cable & Telecommunications Association (CCTA), Citizens Telecommunications Company (Frontier), Pacific Bell Tel. Company (AT&T) and the Small LECs<sup>1</sup> object to the PD approach of using the presence of a single subscriber in a census block to validate deployment data in a census block.<sup>2</sup> CCTA and AT&T claim legal error, stating that Section 281(f)(5)(A) bases census block eligibility for CASF funding on the *availability* of Internet service at speeds at least 6 Mbps download and 1 Mbps upload (6/1) or faster and that the use of a subscriber is improperly mixing availability of service with subscribership. Race disagrees. AB 1665 provides that the basis for eligibility is no Internet service or availability of service below the minimum 6/1 speed<sup>3</sup> in the census block. The PD sets forth the fact that the deployment data proffered by incumbent providers in FCC Form 477 “overstates broadband availability” due to erroneous deployment data, and that the Federal Communications Commission (FCC), U.S. Department of Agriculture, and this Commission – all public agencies that grant funds for broadband development – are all struggling with this long

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<sup>1</sup> Calaveras Telephone Company, Cal-Ore Tel. Company, Ducor Tel. Co. et al.

<sup>2</sup> CCTA Comments at 3, Frontier Comments at 3, AT&T Comments at 1-2, Small LECs Comments at 2-4.

<sup>3</sup> Hereinafter referred to as “low broadband speed” areas.

time “bad data” issue.<sup>4</sup> As the PD observes, the inaccurate incumbent provider coverage data acts to prevent broadband grants to unserved or low broadband speed areas, leading to “significant frustration and confusion in communities hoping to improve broadband service using a CASF grant.”<sup>5</sup>

To help resolve this problem, the PD proposes using verification of the presence of a single subscriber in a census block *only for the express purpose of validating submitted deployment data*.<sup>6</sup> Despite incumbent providers’ allegations to the contrary, this proposal does not improperly substitute a subscription basis for availability of service. It is merely *verifying data* the provider submitted as to availability of the service in a particular census block. This is appropriate under AB1665. Section 281(f)(8) provides that the Commission shall provide each applicant and challenger “the opportunity to demonstrate actual levels of broadband service in the project area. . . . “ The word “actual” indicates the Legislature desired proof of *actual service*, not merely claimed service. The incumbents essentially are saying “just believe us” as to their claimed broadband coverage.<sup>7</sup> Instead, the PD adopts a new “trust but verify” approach including the new mandatory CAF II reporting process,<sup>8</sup> both of which Race applauds as a huge improvement over the past process.

Section 2.3 Ministerial Review. CCTA challenges the proposed Ministerial Review (MR) process proposed in the PD as an unlawful delegation of authority to the Communications Division (CD) Staff.<sup>9</sup> Race urges the Commission to disregard this challenge. There are multiple examples of programs including advice letters<sup>10</sup> where the Commission has delegated

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<sup>4</sup> PD, at 11-12. The OIR establishing this docket, issued Nov. 1, 2012, spends two pages discussing how data from landline and wireless incumbents overstates broadband coverage. The Commission then observed, “Moreover, while both fixed and mobile wireless coverage is the basis for determining whether an area is served or underserved for purposes of determining areas eligible for CASF support, we believe that the number of areas currently designated as either unserved or underserved is understated. For example, data regarding fixed broadband availability is reported at the census block level. If fixed broadband service at a particular speed is reported as available in any part of a census block, the entire census block is shown on the National Broadband Map (NBM) as served, even though only a portion of the census block may be served at that speed, or at all.” See OIR in R.12-10-012, at pp. 9-10. See also fn. 19 describing the FCC’s similar observations.

<sup>5</sup> PD at 12.

<sup>6</sup> PD at 12.

<sup>7</sup> See for example the Small LECs, who want the Commission to “accept information from carriers regarding the functionality of their networks, including speed tests, network engineering documentation reflecting facilities, and any other indicia of facilities capabilities. . . . “ Small LECs at 4.

<sup>8</sup> Race urges that the CAF II reporting scheme in the PD be clarified as mandatory in the Rules as it urged in its earlier Comments.

<sup>9</sup> CCTA at 10.

<sup>10</sup> See for example Decision No. 07-09-019, which adopts Specific Rules for Telecommunications Industry to Use in Filing Advice Letters with information and tariff changes, and General Order 96-B.

authority to Communications Division (CD) Staff for various ministerial actions within guidelines. The MR process proposed in the PD is no different. Overall, Race commends the Commission on its initiative represented by the MR proposal. Race agrees that the major benefit of the MR proposal is that it may bring faster grants to smaller CASF projects that may include unserved low-income communities; that is a meritorious goal that Race certainly supports. Race would prefer to see higher total grant amounts (\$10,000 - \$20,000/project maximum) to make the MR process more impactful for projects involving low income and unserved areas, however.

As to the proposed Ministerial Review process, the PD sets forth delegated authority to approve applications that, among other things, have costs per households that are low.<sup>11</sup> The PD sets maximum costs for fiber projects at \$6,000 per household or less, and fixed wireless projects at \$1,500 per household or less. In its Comments, California Internet (Geolinks) has objected that this is not a technology neutral approach contrary to Section 281(f)(1), and that there is no rationale stated for the difference. Geolinks goes on to advocate for a single ministerial threshold that is \$4,000 regardless of technology used.<sup>12</sup> Race cannot agree with this approach suggested by Geolinks, a fixed wireless provider. The fact is that different technologies have different cost bases, and it is appropriate and fiscally responsible for the Commission to provide incentives for cost effective projects for the MR process, given the CASF fund is limited. An applicant is not obligated to apply for a Ministerial Review project. Race further points out that wireless infrastructure has a useful life of 5-7 years whereas fiber infrastructure has a useful life of 30-50 years. So one must refresh wireless infrastructure six times to reach the minimum fiber useful life of 30 years. Instead, Race suggests using anything below the average cost of past granted CASF projects of like technology to establish the low-cost aspect of an MR project. Race agrees with Geolinks that the PD should explain the approach it took to establish its final low-cost benchmarks.

On the same MR topic, Race agrees with the Public Advocates Office (PAO) that other technologies should be listed along with fixed wireless and fiber, including DSL and cable coax technology, for fairness.<sup>13</sup> Race supports the DSL figure (\$500/HH maximum) put forward by PAO, and agrees that for greenfield coaxial cable, using the same figure as fiber is appropriate. Finally, Race would suggest putting in a mention that prevailing wage requirement changes after

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<sup>11</sup> PD at 26.

<sup>12</sup> Geolinks at 1-2.

<sup>13</sup> PAO at 4.

the project is submitted can often increase projects costs, and these should be allowed by Staff since complying with such wages is mandatory.

Section 2.7 Information Required of Applicants. Frontier has objected to the additional information requested in the project summary contained in the PD.<sup>14</sup> Race appreciates the reduced list in the PD, and only cautions about a few issues. One, its description of major infrastructure is a good faith estimate based on contractors' bids. Two, some of our contractors have NDAs in place with us that do not allow Race to disclose costs per item, so this level of detail should be avoided. Three, as noted before, paying the prevailing wage is mandated by the CASF Program, and should there be changes in this cost, projects costs will go up accordingly. It might be advantageous to state that project increases due to increases in prevailing wage may be granted by MR by the Staff. Finally Race agrees with Central Coast Broadband Consortia that projects summaries should not include competitively sensitive information that may be used against the applicant in a challenge.

Section 2.11 Submission and Selection Timelines. CCTA strongly objects to the PD where it states, "We direct the Communications Division to prioritize review of Applications for low-income communities over higher-income communities."<sup>15</sup> CCTA argues that AB1665 prioritizes eligible projects in consortia regions that have not yet achieved broadband access to 98% of households, and that it is legal error to elevate service to low-income communities over unserved communities in consortia regions where the 98% goal has not been achieved. Race must object. Race has taken on numerous projects that include very low-income communities<sup>16</sup> that have remained unserved by incumbent providers that apparently do not think that there's a business case to be made in these communities. In light of the fact that in some circumstances, incumbent providers not to upgrade broadband facilities in low-income communities, Race contends that it is very appropriate and reasonable for the Commission to provide extra incentives for providers to present projects to serve these communities stuck on the other side of the Digital Divide.

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<sup>14</sup> Frontier at 5.

<sup>15</sup> CCTA at 14 referring to PD at 56.

<sup>16</sup> Examples of Race's CASF projects that serve low-income communities include Gigafy Phelan (Phelan), Gigafy Backus (Mojave), Gigafy Mono (Benton, Chalfant, and Mono City), and Lee Vining (the latter was Race-funded and not a CASF project).

Section 2.12 Project Challenges. Relating to application challenges, CCTA asks for additional challenges (1) after every amendment to an application and (2) after any change to the “project area”.<sup>17</sup> The PD more sensibly allows only one challenge by a provider. A challenger should only have one challenge to prove it provides broadband service at or above the required 6/1 speeds. The record reflects comments by past CASF applicants including Race that have complained that they were subject to more than one challenge in the past, and this was time consuming, costly and discouraged them from participating in the CASF program.

WHEREFORE, Race respectfully requests that its Reply Comments be considered as to the final decision.

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<sup>17</sup> CCTA at 2-3.